



**DRAFT**  
**July 2, 2002**

**LIBBY HEALTH CARE PROJECT  
ADMINISTRATIVE SERVICES AGREEMENT**

This Administrative Services Agreement ("Agreement") between the Asbestos Related Libby Health Care Project Board of Trustees ("Our," "Us," or "We" in this Agreement) and W.R. Grace & Co. ("You" or "Your" in this Agreement) is effective \_\_\_\_\_, 2002 ("Effective Date"). This Agreement covers the services we are providing to implement the Libby Health Care Project (HCP).

This Agreement is structured so that the General Provisions appear first and the related Exhibits follow. The Agreement consists of this page, the main body following this page, and the Exhibits.

By signing below, each party agrees to the terms of this Agreement.

**HCP Board of Trustees**

\_\_\_\_\_  
**Libby, MT**

**W.R. Grace & Co.**

**7500 Grace Drive  
Columbia, MD 21044**

By \_\_\_\_\_  
Authorized Signature

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_  
Authorized Signature

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Date \_\_\_\_\_

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EXHIBIT B: Articles of Incorporation of Asbestos Related Health Care Project, Inc.	
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## **Section 1. Purpose**

Pursuant to the terms of the Consent Decree (Exhibit A hereto), Grace will implement a Supplemental Environmental Project ("SEP"), as described in the Section VI of the Consent Decree, in which Grace will provide \$2,750,000 in funding to a Montana non-profit corporation (referred to herein as the "Health Care Project" or "HCP") to establish and administer a program to pay for medical care for asbestos-related illnesses which are not covered by W.R. Grace's Libby Medical Program, and related administrative expenses. Specifically, the HCP will use the SEP Funds to pay for Coverage, as defined in Section 2, number 4 of this Consent Decree, and related administrative expenses. This HCP was undertaken in connection with the settlement of an enforcement action brought by the United States.

## **Section 2. Definitions**

When the terms listed below are used in this Agreement they shall have the meaning given below. The words may or may not be capitalized and may be singular or plural.

1. "Alternative Care" shall mean that care provided in an extended care facility or a skilled nursing facility as described in W.R. Grace's Libby Medical Plan.
2. "ATSDR" shall mean the United States Agency for Toxic Substances and Disease Registry.
3. "Consent Decree" shall mean the Consent Decree between Grace and EPA attached hereto as Exhibit A.
4. "Coverage" shall mean the provision of the following medical benefits: (1) For those individuals meeting the terms of eligibility for screening under ATSDR's 2000-2001 health screening program in Libby, Montana, the payment of the costs associated with an annual screening for asbestos-related disease which results in Negative Findings; (2) For those individuals meeting the terms of eligibility for screening under ATSDR's 2000-2001 health screening program in Libby, Montana, payment of the costs associated with an annual screening for asbestos-related disease which results in Equivocal Findings and the costs of any further medical testing prescribed by a qualified doctor which results in Negative Findings; (3) For those people who are Eligible Individuals with Qualifying Medical Conditions under W.R. Grace's Libby Medical Program, the payment of a subsidy, based on income, for costs associated with Alternative Care beyond that provided under W.R. Grace's Libby Medical Program; and (4) The provision of any other medical service, as approved by the Board of Trustees, to Eligible Individuals with Qualifying Medical Conditions that does not overlap those services provided for by W.R. Grace's Libby Medical Program.

5. "Eligible Individual" shall mean an individual who worked in the Libby Mine or Mill, or was the spouse or legal dependent of someone at the time he or she worked in the Libby Mine or Mill, or lived or worked within a 20-mile radius of the Libby Mine or Mill for at least six (6) months at any time before January 1, 2000, and who meets the other criteria described in W.R. Grace's Libby Medical Program.
6. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
7. "Equivocal Findings" shall mean results of medical testing which do not conclusively show a Qualifying Medical Condition, but which lead a qualified physician to determine that further medical testing is necessary.
8. "Grace" shall mean W.R. Grace & Co.
9. "Health Care Project" or "HCP" shall mean either (a) the Asbestos Related Libby Health Care Project, a non-profit Montana corporation formed to undertake the SEP set forth in Section VI of the Consent Decree, or (b) the plan or program developed and carried out by the HCP for providing Coverage.
10. "Heath Care Project Fund" or "HCP Fund" shall mean a bank account into which Grace will transfer the SEP Funds from the escrow account set up by Grace pursuant to Section VI of the Consent Decree.
11. "Negative Findings" shall mean results of medical testing which conclusively show that an Eligible Individual does not have a Qualifying Medical Condition.
12. "Oversight Costs" shall mean those costs incurred by Grace in ensuring that the SEP Funds are spent on medical services falling within the definition of "Coverage," as required by Section 2, number 4.
13. "Qualifying Medical Conditions" shall mean those medical conditions defined as Qualifying Medical Conditions within W.R. Grace's Libby Medical Program.
14. "SEP Funds" shall mean the \$2,750,000 placed into an escrow account by Grace pursuant to Section VI of the Consent Decree, plus accrued interest less any administrative expenses charged by the bank for establishing and administering the escrow account.
15. "Supplemental Environmental Project" or "SEP" shall mean an environmentally beneficial project not otherwise required by law, as described in the Final EPA Supplemental Environmental Projects Policy, 63 Fed. Reg. 24,796 (1998).
16. "W.R. Grace's Libby Medical Program" shall mean the plan entitled "GRACE, Libby Medical Program as of April 3, 2000, revision 004," as amended from time to time.

### **Section 3. Responsibilities of the Parties Hereto under the SEP**

#### **Section 3.1. Responsibilities of the HCP Board of Trustees.**

(a) The HCP Board of Trustees shall select a Program Administrator within sixty (60) days after execution of this Agreement;

(b) The Board of Trustees shall approve a medical plan to implement the Coverage to be provided by the HCP within one hundred twenty (120) days after execution of this Agreement; and

(c) The medical plan shall be implemented within one hundred and fifty (150) days after execution of this agreement.

**Section 3.2. Grace Responsibilities.** Grace's responsibilities related to the SEP under this Agreement shall be limited to the following:

(a) Providing the SEP Funds and any other establishment or oversight support specifically required in the Consent Decree;

(b) Forming the HCP (including soliciting trustee nominations), consistent with the Consent Decree and applicable state or federal law;

(c) Enforcing the terms of this agreement; and

(d) Auditing the HCP's cash disbursements for the SEP on a quarterly basis to ensure that the HCP's expenditures are for Coverage or other expenditures allowed under the Consent Decree, provided that Grace shall not be responsible for auditing any other aspect of the operation of the HCP, including, but not limited to, issues involving the actual amounts paid or reimbursed by the HCP for Coverage.

**Section 3.3. Responsibilities of the SEP.** The HCP shall assume and retain the responsibilities and liabilities regarding the implementation of the SEP and the expenditure of SEP Funds including, but not limited to, the following:

(a) Investing the SEP Funds;

(b) Establishing and implementing standards and procedures for the distribution of the SEP Funds;

(c) Establishing and implementing standards and procedures for the appointment or election of additional or replacement members of the HCP Board of Trustees;

(d) Satisfying all applicable legal and tax filing requirements;

(e) Paying any applicable taxes; and

(f) Purchasing and retaining appropriate directors' and officers' liability insurance (and a crime bond) from a third-party insurer, which shall provide at least \$2 million of coverage for any event that may be a crime or a breach of any fiduciary duty involving the SEP and the proper and lawful management of the SEP Funds. The HCP will, at its sole discretion, set priorities for expenditures among the four categories of Coverage specified in Section 2, number 4, determine the eligibility of specific individuals for such Coverage, and establish the appropriate amount to be paid or reimbursed for such Coverage.

#### **Section 4. Records, Information, Audits**

**Section 4.1. Records.** We will keep records relating to the services we provide under this Agreement for as long as we are required to do so by law.

**Section 4.2. Access to Information.** If you need information, for an audit or otherwise, that we have in our possession in order to administer the HCP, we will give you access to that information, if legally permissible, as long as the information relates to our services under this Agreement, and you give us thirty (30) days prior notice of the need for the information.

We will provide information only while this Agreement is in effect and for a period of six (6) months after the Agreement terminates, unless you demonstrate that the information is required by law.

We will also provide reasonable access to information to an entity providing services to you, such as an auditor or other consultant, if you request it.

**Section 4.3. Audits.** During the term of the Agreement, and at any time within six (6) months following its termination, you or a mutually agreeable entity may audit us to determine whether we are fulfilling the terms of this Agreement. You must advise us at least thirty (30) days in advance of your intent to audit. The place, time, type, duration, and frequency of all audits must be reasonable and agreed to by us. All audits shall be limited to information relating to the calendar year in which the audit is conducted and/or the immediately preceding calendar year. With respect to our transaction processing services, the audit scope and methodology shall be consistent with generally acceptable auditing standards.

You will provide us with a copy of any audit reports.

**Section 4.4 Confidential Participant and Proprietary Business Information.**

Proprietary business information and confidential participant information will be used solely to administer the HCP or to perform under this Agreement. Confidential participant information and proprietary business information will not be disclosed to any person or entity other than either party's employees, subcontractors, or representatives needing access to such information to administer the HCP or perform under this Agreement.

We or a related entity may use confidential participant information for research, creating comparative databases, statistical analysis, or other studies. We will maintain the confidentiality of such information as it relates to any individual participant, provider, or your business. The research, databases, analyses, and studies are considered by us to be proprietary business information.

**Section 5. Indemnification**

We will indemnify you and hold you harmless against any and all losses, liabilities, penalties, fines, costs, damages, and expenses, that you incur, including reasonable attorneys' fees, which arise out of our negligence, gross negligence or willful misconduct in the performance of our obligations under this Agreement or our material breach of this Agreement, as determined by a court or other tribunal having jurisdiction of the matter.

**Section 6 – HCP Benefits Litigation**

**Section 6.1. Litigation Against Us.** If a demand is asserted or litigation or administrative proceedings are commenced by a participant or health care provider against us, or against the HCP and us jointly, to recover HCP benefits, related to our duties under the Agreement ("HCP Benefits Litigation"), we will select and retain defense counsel to represent our interest. In actions asserted against both you and us, and provided no conflict of interest arises between the parties, we will agree to joint defense counsel. All legal fees and costs we incur in defense of the litigation will be paid by us. Both parties will cooperate fully with each other in the defense of the HCP Benefits Litigation. With respect to matter involving less than \$50,000, we will have discretion to resolve HCP Benefits Litigation in a reasonable manner and for a reasonable amount under the circumstances. For matters in excess of \$50,000, any settlement will be subject to your consent, which will not be unreasonably withheld.

In all events the HCP Fund will be responsible for the full amount of any HCP benefits paid as a result of such litigation.

**Section 6.2, Litigation Against You.** If litigation or administrative proceedings are commenced against you and/or the HCP, you will select and retain counsel and you will be responsible for all legal fees and costs in connection with such litigation. We will

cooperate fully in the defense of litigation arising out of matters relating to this Agreement.

## **Section 7. Taxes and Assessments**

**Section 7.1. Payment of Taxes and Expenses.** The HCP Fund will pay any taxes that are addressed against us or that we are required to pay, now or in the future, relating to : (1) the HCP; (2) taxes relating to benefit payments under the HCP; (3) this Agreement; or (4) our fees or services under this Agreement (but not taxes on our net income). We have the authority and discretion to determine whether any such tax should be paid or disputed. We will act reasonably in making that determination. We will also reimburse you for any cost or expense reasonably incurred by you relating to such tax, including costs and reasonable attorneys' fees incurred in disputing such tax, and any interest, fines, or penalties relating to such tax.

**Section 7.2. Tax Reporting.** In the event that the reimbursement of any benefits to participants in connection with this Agreement is subject to tax reporting requirements, we are responsible for complying with these requirements.

## **Section 8. Term of the Agreement**

**Section 8.1. Services Begin.** We will begin providing services under this Agreement on the Effective Date. Our services apply only to claims for HCP benefits that are incurred on or after the Effective Date.

**Section 8.2. Services End.** Our services under this Agreement stop on the date this Agreement terminates, regardless of the date that claims are incurred. However, we may agree to continue providing certain services beyond the termination date.

## **Section 9. Termination of the Agreement**

**Section 9.1. Termination Generally.** This Agreement will terminate when any of the following events occur:

- (1) The HCP Fund is exhausted;
- (2) Both parties agree to terminate the Agreement; or,
- (3) Either party gives the other party at least thirty (30) days prior written notice.



**Section 9.2. Termination for Material Breach by HCP.** If, at any time, the HCP materially breaches its obligations to Grace set forth in this Agreement Grace will, in consultation with EPA, enforce this Agreement. If Grace believes the HCP Board of Trustees is unable to perform its obligations under this agreement and, after consultation EPA agrees, the HCP shall place the remaining SEP Funds in an escrow account, and EPA and Grace shall develop and implement an alternate SEP. In no event shall Grace be liable for any acts or omissions of the HCP Board of Trustees during a period in which required insurance policies have been allowed to lapse.

## **Section 10. Services Provisions**

**Section 10.1. Claims Processing.** Claims for HCP benefits must be submitted in a form that, in our reasonable judgement, is satisfactory to us. We will determine whether a benefit is payable under the HCP's provisions.

In applying the HCP's provisions, we will use claim procedures and standards that we develop for benefit claim determination. We have the discretion and authority to implement such procedures and standards..

HCP benefits for health care services rendered by health care providers shall be equal to the amounts that are ordinary, customary, and reasonable. These amounts can be traditional fees for services, capitated rates, or some other kind of fee or rate. A capitated rate is an amount paid to a health care provider on a per participant per month basis or a similar arrangement.

**Section 10.2. Providing Funds for Benefits.** We will open and maintain the HCP Fund, an account at     [Bank]    , for the purpose of providing us a means to fund HCP benefits and expenses. Within fifteen (15) days of its receipt of our written notice that the HCP Fund has been established and our request that Grace do so, Grace shall transfer the SEP Funds from the escrow account set up by Grace pursuant to Section VI of the Consent Decree into the HCP Fund.

**Section 10.3. Claims by Other Parties.** If there is any claim that we are an entity responsible for paying benefits or making any payment on behalf of the HCP or a participant to another health benefits plan, or to any other person or entity, including but not limited to a claim based upon the federal Medicare secondary payer laws, the HCP Fund shall indemnify and hold us harmless with respect to such a claim and all costs associated with the claim. When such claims involve taxes, assessments or other governmental charges, the claims shall also be subject to Section 7 of this Agreement.

## **Section 11. Miscellaneous**

**Section 11.1 Subcontractors.** We can use our affiliates or other subcontractors to perform our services under this Agreement. However, we will be responsible for those services to the same extent that we would have been had we performed those services without the use of an affiliate or subcontractor.

**Section 11.2. Assignment.** Except as provided in this paragraph, neither party can assign this Agreement or any rights or obligations under this Agreement to anyone without the other party's written consent. That consent shall not be unreasonably withheld. Notwithstanding the foregoing, either of the parties can assign this Agreement, including all of the party's rights and obligations to its affiliates, to entities controlling, controlled by, or under common control with the party, or a purchaser of all or substantially all of the party's assets, subject to notice to the other party.

**Section 11.3. Governing Law.** This Agreement is governed by the laws of the State of Montana.

**Section 11.4. Entire Agreement.** This Agreement, with its exhibits, constitutes the entire Agreement between the parties governing the subject matter of this Agreement. This Agreement replaces any prior written or oral communications or agreements between the parties relating to the subject matter of this Agreement. The headings and titles within this Agreement are for convenience only and are not part of the Agreement.

**Section 11.5. Amendment.** Except as may otherwise be set forth in this Agreement, the Agreement may be amended only by both parties agreeing to the amendment in writing, executed by a duly authorized person of each party.

**Section 11.6. Waiver.** Nothing in this Agreement is considered to be waived by any party unless the party claiming that waiver receives the waiver in writing. No breach of the Agreement is considered to be waived unless the non-breaching party waives it in writing. A waiver of one provision does not constitute a waiver of any other.